IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 610 OF 2007

M/s. Sweta Enterprises ..Petitioner

Vs.

M/s. Amrutlal & Brothers ..Respondents

Mr. Abhay L. Patki for petitioner.

Ms. Mamta Sadh with Ashok Purohit i/by Zohair and Co. for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 28, 2007.

P.C.:

1. Heard Mr. Patki the learned counsel for the petitioner who was the plaintiff-landlord in RAE Suit No. 624 of 1994. The said suit was filed for a decree of possession of the suit premises and it came to be decreed ex parte on 1/1/2003. Consequently the decree was executed on 14/7/2003 and the plaintiff was put in possession of the suit premises. The present respondent-defendant in the said suit filed Misc. Notice No. 124 of 2004 for setting aside the ex parte

decree and the same was allowed on 27/9/2005 which order came to be challenged by the present petitioner in Writ Petition No. 8717 of 2005. Both the parties signed consent terms and placed before this court by way of Minutes of Order and prayed for the disposal of Writ Petition No. 8717 of 2005 in terms of the said Minutes. Consequently, Writ Petition No. 8717 of 2005 came to be disposed in terms of the Minutes of Order marked "X", on 21/2/2006.

2. Thereafter RAE Suit No. 624 of 1994came to be decided afresh and by Judgment and Decree dated 7/9/2006 it was dismissed. The trial court further directed the plaintiff to restore the vacant and peaceful possession of the suit premises i.e. Garage admeasuring 150 sq.ft. at Building "B", Shanta Kunj at Ram Mandir Road, Vile Parle (East), Mumbai 400 057 to the defendant on or before 7/12/2006. Being aggrieved by this decree, the plaintiff filed Appeal No. 333 of 2006 and on its admission an application at Exh.5 came to be filed for interim injunction/stay. By the impugned order dated 7/12/2006 a Division Bench

of the Lower Appellate Court was pleased to reject the application at Exh.5.

3. Mr. Patki the learned counsel for the petitioner referred to the Minutes of Order dated 21/2/2006 disposing Writ Petition No. 8717 of 2005 and submitted that handing over of the suit premises to the plaintiff was subject to his right to file appeal and, therefore, the Division Bench of the Lower Appellate Court was in gross errors to reject the application at Exh.5 during the pendency of the appeal.

4. It would be relevant to reproduce Clause 2 of the Minutes of the Order which were accepted by this court while disposing off Writ Petition No. 8717 of 2005 on 21/2/2006. Clause 2 of the Minutes of Order reads as under:-

> "2. The petitioner/Org. Pltff. undertakes to this Hon’ble Court.

(a) that they will not further renew the leave and license agreement, at present subsisting in favour of Ms. Rupal M. Shah after expiry of 33 months from 17th July, 2003;

(b) that they will not further part with possession or create third party rights in the suit premises or any part thereof;

(c) that in the event of the Respondent/ Org. Defendant succeeds in the suit, the petitioner/ Org. plaintiff shall forthwith put the Respondent/Orig. Defendant in vacant and peaceful possession thereof subject to the Petitioner’s/ Org. Plaintiff’s right to file appeal."

5. Clause (a) is a caveat on the present petitioner not to renew leave and license agreement

subsisting at that time in favour of Ms. Rupal M. Shah after expiry of 33 months from July 17, 2003. The license period has already expired and, therefore, the plaintiff has no right to create or renew the leave and license agreement any further and in favour of any one. As per clause (b) the plaintiff is restrained from parting with the possession of the suit premises or create third party rights in the said premises or any part thereof in favour of any third party. The plaintiff was successful in taking possession from the present respondent on the basis of the ex parte decree and that having been set aside and the petitioner's suit having been dismissed, on expiry of the license created in favour of Ms.Rupal M. Shah, the Lower Appellate Court rightly rejected the application at Exh.5. The plaintiff's right of appeal as set out in clause 2(c) of the Minutes of Order cannot be interpreted to mean that the plaintiff is entitled to hold possession over the suit premises and deny the said possession to the defendant until the pendency of the appeal and the suit premises are a Garage admeasuring 150 sq.ft. If the plaintiff succeeds in the appeal, the suit will stand decreed

and the plaintiff will be put in possession by following the due process in law.

6. In these obtaining circumstances, the view taken by the Lower Appellate Court in rejecting the application at Exh.5 cannot be termed as a perverse or patently erroneous so as to cause interference under Article 227 of the Constitution and hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)